IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7112 OF 2004

The Municipal Corporation of
the City of Pune & Anr. .... Petitioners
Vs.
Mrs. Swati Vinayak Nimhan
and others .... Respondents

Shri R.G. Ketkar for the Petitioners.

Shri Bipin A. Jagole for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 24, 2004

P.C:

1. Heard. The petitioners challenge the order dated 13-7-2004 passed by the Small Causes Court, Pune ordering recounting of the votes. Though the impugned order is sought to be challenged on various grounds, it is not necessary to refer to all those grounds and suffice to consider only two points - one that similar writ petition being Writ Petition No.6067 of 2004 against the same order has already been dismissed by the learned single Judge by order dated 5-8-2004 by a speaking order. I am entirely in agreement with all the observations by the learned single Judge in the said order. It is also to be noted that the learned trial Court in para 28 of the impugned order has observed thus:-

> "Considering, all above stated facts, evidence on record and reasons stated earlier, I am of the view that petitioner has proved that the announcement of the prize for the returning Officer, who stood first in completing counting of ballot papers and declaration of result from his Prabhag, is bad in law, it resulted to scrutinisation and counting process hurriedly by the Respondent No.7 and his staff. Because of such hurriedly scrutiny and counting the ballot papers were not shown properly to the Petitioner and her agent. The ballot papers were not confirmed as regard to valid or invalid voter and also confirmity of the votes received to particular candidate. It is also resulted and create doubt in mind as to whether bundles of ballot papers calling of 25 numbers were really of 25 or not."

In fact the above quoted observations are sufficient to dismiss the petition in limine. It is indeed surprising that prizes are sought to be announced

for performing the legal obligations and duties of public officers and, that too, in the matter of counting of ballot papers. It should not be forgotten that the ballot papers represent the expression of the opinion of the people from the constituency in relation to which the election is held. It is the duty of every officer allotted with the work of counting of ballot papers, including the work of scrutiny, to perform the said work with proper sense of duty and bearing in mind that they are required to perform the said duty in accordance with the provisions of law and not to perform the said work as if they are appearing for any exam to secure higher marks or participating in any competition requiring to exhibit any excellence in the technique of counting of ballot papers or scrutiny. Any hurry in counting or scrutiny of the ballot papers can result in defeating the very purpose of holding the election and ultimately it could harm the very process of election. Bearing this mind and considering the findings arrived at by the trial Court in the above quoted para, there is absolutely no case for interference in the impugned order. Hence the petition is rejected.

Certified copy expedited.